

Congress of the United States

Washington, DC 20515

January 28, 2005

The Honorable Raymond Simon
Assistant Secretary of Education
United States Department of Education
400 Maryland Avenue, SW
Washington, DC 20202-1510

Dear Secretary Simon:

We want to take this opportunity to thank you for meeting with us on January 26, 2005 regarding the Department of Education's (DoE) recent judgment that North Dakota's definition for "highly qualified teacher" (HQ) does not comply with its interpretation of the No Child Left Behind Act (NCLB). We appreciated this meeting, and we look forward to meeting with you again on February 2 to learn how you intend to resolve our concerns, so that many quality, veteran North Dakota teachers – who in our view are "highly qualified" – can remain in the classroom.

We were encouraged by your acknowledgment that a degree in elementary education may meet the statute's "high objective uniform State standard of evaluation" (HOUSSE) of teacher competence if it satisfies the seven requirements delineated in Section 9101 (23) of NCLB (see Appendix A). We have attached a memorandum (see Appendix B) describing North Dakota's rigorous requirements for an elementary major, which include, among other things, 40-68 semester hours of combined credit in reading, social studies, mathematics and science hours. We would also like to point out – in response to a question posed at the meeting – that all graduates from institutions outside of North Dakota also have to meet these standards. We believe you will be pleasantly surprised to learn of our state's demanding and comprehensive university curriculum preparing North Dakota's elementary teachers for the rigors of the classroom.

We also request that you revisit your determination on January 25, 2005, that North Dakota's HOUSSE option for determining middle school teacher competence does not meet DoE's requirements. Not only was this decision not timely, but it explicitly contradicts guidance provided in a conference call in February 2003, seven months before the definition was formally submitted to DoE. During this conference call, DoE informed the North Dakota Education Standards and Practices Board that the state would have to require at least 24 credits for new teachers, but that 16 credits *were* acceptable for veteran teachers.


In that vein, we continue to hold the view that DoE had a statutory obligation to review the state's HQ definition within 120 days of its submission to DoE on September 1, 2003. While DoE chose to have states submit the "consolidated state plan" outlined in Section 1111 of the statute in phases, it still had a statutory obligation to approve or disapprove each component of this application, including the HQ component, within 120 days of its submission. Not only was North Dakota led to believe by DoE that its plan was in accordance with DoE's interpretation of NCLB, but it is yet to receive a hearing consistent with due process since the plan was disqualified on December 1, 2004 (see Appendix C).

In light of DoE's responsibilities under the statute, we believe it is now incumbent on DoE to fix these problems. All of North Dakota is anxious to get this problem resolved as soon as possible, but in particular, Title I teachers and, as interpreted just last week, Class-Size Reduction teachers require immediate relief from the HQ compliance requirements in the statute. Since no definition currently exists for these veteran teachers to meet, it is ludicrous to suggest that they could lose their jobs if they cannot immediately meet the non-existent definition. Additionally, we believe the Department has an obligation to abide by its previous interpretation that the definition of a "new teacher" includes all teachers hired after July 1, 2006, not those hired at the beginning of the 2005-2006 school year as was determined at the meeting on January 25 (see Appendix D).

Finally, we look forward to hearing the DoE General Counsel's response about which of the non-regulatory guidance documents – issued in June 2002, December 2002, September 2003, and January 2004 – the state should refer to in the future, especially since the two most recent documents were issued after the state submitted its HQ definition for review. We believe North Dakota, and at least 10 other states, would not be faced with the current situation if DoE had provided timely, informative and consistent guidance to states regarding its interpretation of NCLB.

Again, thank you for meeting with us to discuss these important issues. We appreciate this opportunity to share our views, and we look forward to hearing how you plan to address these concerns.

Sincerely,


EARL POMEROY
U.S. House of Representatives


KENT CONRAD
U.S. Senate


BYRON DORGAN
U.S. Senate